IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 1.12.2003

CORAM

THE HON'BLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

W.A No.790 of 2003

The Controller of Examinations
Pondicherry University
Pondicherry. .. Appellant

- vs -

1.S.Shyamala

2.Vinayaka Mission Medical College
Keezhakasakudimedu
Kottucheri (PO)
Karaikal - 609 609
Pondicherry State. .. Respondents

Appeal against the order dated 11.12.2002 made in W.P No.37595 of 20
02.

!For Appellant : Mrs.G.Thilakavathi
^For Respt. 1 : Ms.R.Vaigai
For Respt. 2 : Mr.Mohan Parasaran
Senior Counsel for
Mr.Sathish Parasaran

* * * * *
:J U D G M E N T
(Judgment of the Court was delivered by V.S.SIRPURKAR,J)

This is a classic example where, though the
unfortunate petitioner has succeeded in her writ petition, she would
not get the real advantage of that judgment.

2. The first respondent herein namely S.Shyamala,

though entered a medical college in July 2000, that college got its approval from the Medical Council of India only with effect from December 2000. In short, her training in the medical course and more particularly M.B.B.S Phase I started effectively in December 2000. She took her first examination therefore for M.B.B.S Phase I in December 2001. She failed in that examination in the subject of Physiology. She therefore appeared for the next examination which is in the nature of arrears examination in May 2002. In this examination also she was declared to have failed. But before the result came, there was an amendment to the Regulations on Graduate Medical Education, 1997. This amendment was published in the Government Gazette on 2.7.2002 and it came into force with effect from the same day owing to Regulation 1(2) of the Notification dated 1.7.2002. By

that amendment, Regulation 13 of the Regulations on Graduate Medical Education, 1997 was amended in the sense that a new sub-regulation 10 was added which was as under:

"The grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects."

3. The facts suggest that though the writ petitioner had failed only in one subject by three marks in the examination held in December 2 001, in the May examination however, she failed by thirteen marks and obviously the advantage of this Amendment was not given to her insofar as the examination held in May 2002. It is again liable to be noted that though the arrears examination was held in May 2002, perhaps because the results were not declared by then, the advantage of this Amendment which came on the anvil on 1.7.2002 was given to the students who had appeared even in the examinations held prior thereto. Be that as it may, since the petitioner student did not get the advantage of this Amendment, she filed writ petition no.37595/2002. Her stand was that this Amendment should be held to be retrospective in nature and should be held applicable atleast to the examination held in December 2001 because, if it was made applicable to the examination held in May 2002, which was only an arrears examination, by necessary implication, it should also be made applicable to the examination held earlier in December 2001. The prayer in this writ petition is in the following terms:

"For the afore reasons, this Hon'ble Court may be pleased to issue any appropriate Writ Order or Direction, and in particular issue a Writ of Mandamus, directing the first respondent to produce the answer papers of the petitioner in Physiology I and II of the 1st year M.B.B.S Examination with Registration No.2161717574 (taken in December, 200 1 and in May, 2002) verify the petitioner's marks and promote her to second year M.B.B.S 2002-2003, by declaring her as passed after granting her grace marks as per practice and as approved in the Medical Council of India's Notification dated 01.07.2002,

containing Graduate Medical Education (Amendment) Regulations, 2002 and pass such other orders as are necessary and proper to meet the ends of justice."

4. This writ petition seems to have been filed in September 2002. It came to be decided on 11.12.2002 and the learned Single Judge dealing with the same passed the following order:

"22. With the result, the writ petition is allowed as prayed for. No costs. Consequently, connected WPMP No.56423 of 2002 is closed."

We have perused the WPMP No.56423 of 2002, where the prayer is in the identical terms. It goes therefore without saying that during the pendency of this writ petition between September 2002 to December 2002 , there was no direction by the Court permitting the student to take up the classes of the M.B.B.S Phase II or the second M.B.B.S course. That there was no such order is an admitted position. Be that as it may, when the writ petition was allowed, even before that, the student who had failed even in the May 2002 examination in the subject of Physiology took a third attempt. The examination was held on 10th December 2002 and she was also declared passed. She therefore started attending the second M.B.B.S course from December 2002.

5. This order of the learned Single Judge was appealed against by the University by way of the present writ appeal. During the pendency of the appeal before us, the second professional examination for the batch which started the Phase II of this course in December 2001 came to be fixed on May 2003. That was the first time, when any student who had commenced his or her course in 2000-2001 as a M.B.B.S Phase I student could have taken the second professional examination. An application came to be made for permitting the writ petitioner to appear for that examination. That permission was granted, however it was directed that the result of the examination would depend upon the success of the writ appeal and that the appeal should be heard expeditiously before December 2003. That is how this appeal has come before us. In the meantime, the student has taken the examination held in May 2003 held for second M.B.B.S course.

6. Mrs.Thilakavathy, learned counsel appearing for the appellant University points out that the Amendment could not be said to be applicable to the examination held in December 2001. The counsel candidly admits that though the arrears examination was held in May 2002, yet, the Amendment was made applicable to the same perhaps because, the results were not out by then for that examination. She however says that it would be incorrect to make that Amendment applicable even to the earlier examination because, devastating results may follow if such retrospective operation was allowed to the Amendment brought in on 1.7.2002. Learned counsel further points out that the language of the Amendment does not in any manner indicate its retrospective operation and therefore the learned

Single Judge should have gone by the rule of literal interpretation and should have held that since the language did not specifically provide the retrospective operation of the Amendment, the Amendment was prospective in nature.

7. On the other hand, Ms.Vaigai, the learned counsel appearing on behalf of the first respondent / petitioner very painstakingly argued that to make the Amendment applicable to the examination held in May 2002 and to deny the same to the examination held in December 2001, though the examination held in May 2002 was a mere continuation of the December 2001 examination, would be a travesty. Learned counsel argues on the basis of the various provisions of the Medical Council of India Regulations as well as the University Regulations that the advantage would have to be given atleast in respect of December 2001 examination, which was the basic examination and of which the May 2002 examination was only an arrear examination and hence a continuation of that examination.

8. However, when this debate was going on, the question came as to whether the second professional examination taken by the student in May-June 2003 should be ratified by the Court and the result thereof should be allowed to be declared. A peculiar position has been brought to our notice by Mrs.Thilakavathy, learned counsel for the University. The learned counsel argues that the Medical Council of India Regulations specifically provide that a medical student cannot be allowed to take up the second professional medical classes, clinicals or the practicals unless he or she has cleared the first year M.B.B.S examination. This, she argues on the basis of Regulation 8, wherein the various phases of the medical course are depicted. The first phase is suggested to be consisting of two semesters of six months each, while the second professional examination is supposed to take place after the student undergoes three more semesters, they being semester nos.3, 4 and 5. The third professional Part I examination has to be taken in the seventh semester, while the third professional Part II (Final Professional examination) has to be taken during the ninth semester. Note (a) of Regulation 8 provides specifically as under:

"(a) Passing in 1st Professional is compulsory before proceeding to Phase II training."

From this, the learned counsel for the appellant University points out that the student could not have proceeded for the training and taking up the course of the second M.B.B.S examination unless she had passed the first M.B.B.S examination and thereafter, she could have taken the second M.B.B.S examination only after completing semester nos.3 , 4 and 5. The learned counsel points out that the attendance as well as the practical training in semester nos.3, 4 and 5 was sine qua non before the student could be allowed to take up the second M.B.B.S examination. She further points out that in the present case, admittedly after the student failed in December 2001 examination, she

could not have attended the classes or the practicals or clinicals meant for second M.B.B.S examination. She also points out that even in the May 2002 examination, the petitioner had failed and therefore, she could not have been able to take up the classes for the second year M.B.B.S course beginning with the third semester. She further points out that in reality, after the student cleared the first professional examination in December 2002, she rightfully started attending the classes for the second year M.B.B.S examination and for that she had to complete the training in semester nos.3, 4 and 5 which would be 18 months in all, each semester being of six months. She further points out that, that way, the second M.B.B.S examination for this student under any circumstances cannot be earlier than May or June 2004. The learned counsel points out that in reality, though the writ petition was filed in September 2002, no orders were obtained from the Court allowing the student to keep her terms in the second year M.B.B.S course and therefore, the student for the first time became entitled to attend the second year M.B.B.S classes-clinicals and practicals only after December 2002, firstly because of a judgment in her favour and secondly also because of the fact that she had cleared the first year examination in December 2002 only. Therefore, the learned counsel argues that it would not be necessary for us to decide the correctness of the order of the learned Single Judge because, the writ petition had become infructuous in the sense that no relief thereunder could be passed because of the peculiarity of the facts in this case. The learned counsel undoubtedly argues that this was not brought to the notice of the learned Single Judge by any of the parties.

9. On this backdrop, as against this Ms.Vaigai, learned counsel appearing on behalf of the first respondent/ petitioner very forcefully argues that it has been the regular practice of the college to allow the students to attend the next year's classes without waiting for the results being declared for the first M.B.B.S examination. The learned counsel further says that in reality, though the petitioner was not entitled to attend the classes - clinicals and practicals for the second year M.B.B.S as was done in the case of the other students, she in fact, attended the classes - practicals and clinicals meant for the third semester, i.e, the beginning semester of the second M.B.B.S course. The learned counsel further argues that the student also attended the next two semesters and since the student was declared to have passed her December 2001 examination by the order in the writ petition and in addition she had taken up and completed all the three semesters of the second year M.B.B.S examination, she was rightly allowed to take up the second year examination held in May 2003. It is thus suggested that though she had failed in December 2001 examination, she continued to attend third, fourth and fifth semester for Phase II M.B.B.S.

10.When it was pointed out to the learned counsel for the first respondent that it was impossible, because the concerned student could not have been allowed to attend the classes and keep her

terms unless she cleared the first M.B.B.S examination in terms of Regulation 8 of the Medical Council of India, the learned counsel insisted that the college authorities should make a statement to that effect. We therefore invited the learned Senior Counsel Mr.Mohan Parasaran appearing for the second respondent college to file an affidavit of the Dean of the college whether there was such a practice available and whether a student though had not cleared the first M.B.B.S examination could still be allowed to keep terms and take up

the classes-clinicals and the practicals of the second year M.B.B.S examination course in third semester, fourth semester and fifth semester.

11. The learned Senior Counsel Mr.Mohan Parasaran very candidly expresses the inability on the part of the Dean of the second respondent college to swear any such affidavit. The learned Senior Counsel does not therefore admit that a student who fails in the first year examination could still be allowed to keep terms for third, fourth and fifth semester as the case may be of the second professional course. Now, if this is the situation, then, even if the learned Single Judge was right in holding that the Amendment was retrospective and could be made applicable to the examination held in December 2001, the benefit of that could not be granted to the petitioner who had clearly not attended the third, fourth and fifth semester classes - clinicals and practicals after successfully completing the course of first M.B.B.S, crossing that crucial gate created under Regulation 8 of the Medical Council of India Regulations. There is no dispute and cannot be any that the Regulations of the Medical Council of India would ultimately be the only authority to judge and to fix the norms for taking up the course and passing the same. Indeed, the counsel on both sides did not dispute this position.

12. However, the learned counsel for the petitioner earnestly urged before us that here was a student who was actually declared to have passed her first year M.B.B.S examination in December 2001 but was being refused an opportunity to appear in the second year examination in which she could rightfully appear and that was arbitrary and contrary to her rights.

13. We do not agree because, it was an admitted position that atleast till 11.12.2002 when the judgment was passed by the learned Single Judge, the status of the petitioner was that of a failure in the first year M.B.B.S examination. Till that date atleast, her attending the classes - clinicals or practicals of second professional course was of no consequence even if in reality she had done so. Unfortunately, in this case, it could not be held that she had actually lawfully and legally attended the third, fourth and fifth semesters because, it was not under the orders of the Court that the student attended the same if at all it is presumed that she did so attend. The learned Senior Counsel Mr.Mohan Parasaran very candidly admitted that such students are not officially shown as the students,

they may be given the advantage of attending the classes and perhaps bettering themselves but they are not shown in the roll as official students of the second year. If that is so, then it would not be possible for us to accept the proposition that her de-facto attendance should be recognised by us and we should direct the publication of her May 2003 examination of Phase II M.B.B.S or even allow her to appear for any examination in second year to be held now in December 2003. The only examination in which she could be allowed to attend would be the examination which would be held in May-June 2004. That is an unfortunate result but under the circumstances, it is a must.

14. In support of her contention that a student like the petitioner could still be allowed to take up the examination even if the attendance was not in terms of the completion of the semester, the learned counsel for the first respondent relied on the judgment of the Supreme Court reported in 2003 (1) Supreme 430 (ASHEESH PRATAP SINGH & ORS. -vs- M.SACHDEVA & ORS.). There, the students who were admitted to a medical college in Azamgarh were practically thrown to the street because that college itself lost its recognition. It appears that thereafter, finding that the students had bonafidely attended the classes and also passed the first year examination, the students were ordered to be allotted to some different colleges. However that allotment resulted in the said students becoming excess students than the authorised sanctioned strength of the college for that particular course. The learned counsel pointed out that the Supreme Court gave the directions in consideration of the fact that those students had suffered for no fault of their's and the students were directed to be accommodated for the second professional examination. The learned counsel tried to urge that it was clear from the facts of that case that the students had not attended the second year classes and yet were given the facility of appearing in the second year professional examination.

15. We are unable to see any similarity in the said judgment with the present set of facts before us. The question which has fallen before us is as to whether a student, who in law could not have attended the classes - practicals and clinicals meant for second year M.B.B.S course in three semesters having not cleared the first M.B.B.S examination, could still be given that benefit. Such is not the question which has fallen for consideration before the Supreme Court. If we give this benefit to the first respondent student accepting the contention that it has been the practice of the college to allow the students to complete the terms even if the student fails to clear a particular subject and is not able to pass the examination, we would be practically wiping out Regulation 8 Note (a) of the Regulations of Medical Council of India because, in that case even if a student fails, that student would still continue to attend the classes and complete the terms and would be liable to be given the credits of his attendance in third or fourth or fifth semester as the case may be. Such cannot be the approach. A judgment becomes a binding law precisely for what it has actually held. It cannot be

interpreted and the fall out of the judgment cannot be held to be a declared law under Article 141 of the Constitution of India. We therefore are unable to accept the contention of the learned counsel for the first respondent .

16. We therefore do not deem it necessary to examine the correctness or otherwise of the judgment of the learned Single Judge because, only one day prior to the delivery of the judgment the student had actually taken the first professional examination (in her third attempt) and ultimately she had cleared it also. There was therefore no question of proceeding with the judgment particularly when the final relief in that judgment could not have been given. The relief of a mere declaration as we have shown earlier would be of no consequence in terms of the final relief and the actual relief, howsofar sympathetic we may feel towards the student. The case is unfortunate however, the law must take its own course. It is clear that the writ petition itself was infructuous and the writ appeal is also disposed of as such in the light of the observations which we have made above. No costs. WAMP 5095 of 2003 is closed.